surety may serve notice on the creditor to sue thereon. See also Hill *v.* Sherman, 15 Iowa 365; Hayward *v.* Fullerton, 75 Iowa, 371, 39 N. W. Rep. 651; Iliff *v.* Weymouth, 40 O. St. 101.

The notice must contain a clear and explicit direction to the creditor to sue upon the contract. Coykendall *v.* Constable, 48 Hun. (N. Y.) 360, 1 N. Y. Sup. 9; Baker *v.* Kellogg, 29 O. St. 663; Conrad *v.* Foy, 68 Pa. St. 381; Greenawalt *v.* Kreider, 3 Pa. St. 264; Lockridge *v.* Upton, 24 Mo. 184; Lawson *v.* Bukley, 2 N. Y. Sup. 178, citing Hunt *v.* Purdy, 82 N. Y. 486; Machine Co. *v.* Farrington, 82 N. Y. 121; Forter *v.* National Bank, 54 O. St. 155; Darby *v.* Berney Nat. Bank, 97 Ala. 643, 11 S. E. Rep. 881; Strickler *v.* Burkholder, 47 Pa. 476; Wilson *v.* Glover, 3 Pa. St. 404.

In a case very similar to the principal case it was held, that a notice from a surety to a creditor, that "if you think" such surety "is in any way liable, you will take notice to proceed accordingly and legally," did not so conform to the statute as to require the plaintiff forthwith to sue upon the note, and was an sufficient notice. Fensler *v.* Prather, 43 Ind. 119, 124.

The notice should not simply direct the bringing of suit against the principal but must demand that suit be brought against all the parties liable. Harriman *v.* Egbert, 36 Iowa 270; Christy *v.* Horne, 24 Mo. 242.

NIXDORF *v.* BLOUNT *et al.*

June 9, 1910.

[68 S. E. 258.]

1. Judgment (§ 780*)—Lien—Property Affected.—Under Code 1904, §3567, making a money judgment a lien on land held by the debtor at or after the date thereof, a judgment binds improvements made by the debtor's vendee with notice at the date of his purchase of the judgment and a lis pendens to enforce it.

[Ed. Note.—For other cases, see judgment, Cent. Dig. §§ 1341, 1343-1349; Dec. Dig. § 780.*]

2. Improvements (§ 4*)—Compensation—Right to.—One can recover for improvements made on lands of another only where they are made under belief that his title is good.

[Ed. Note.—For other cases, see Improvements, Cent. Dig. §§ 4-26; Dec. Dig. § 4.*]

3. Improvements (§ 1*)—Effect.—Permanent improvements upon land become part of it, and the owner must take notice that liens affecting the fee attached to such improvements.

[Ed. Note.—For other cases, see Improvements, Cent. Dig. § 1; Dec. Dig. § 1.*]

---

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

Appeal from Circuit Court of City of Norfolk.

Suit by D. P. Blount against C. W. Tebault and others. From a judgment for plaintiff, defendant Harry Nixdorf appeals. Affirmed.

J. L. Hubard and *D. Tucker Brooke,* for appellant.
R. Randolph Hicks, for appellees.

WHITTLE, J. The question presented upon this appeal is whether the lien of a judgment against an alienor binds improvements made on the land by an alienee with constructive and actual notice of the judgment, and a lis pendens to enforce it, against his grantor at the date of purchase.

From a decree of the circuit court of the city of Norfolk, holding both the lot and improvements liable, this appeal was granted.

In Fulkerson *v.* Taylor, 100 Va. 426, 437, 41 S. E. 863, 867, it is said: "Whether or not a judgment lien binds improvements in the hands of an alienee is a question of much interest and importance, one which has not been directly passed upon by this court, and which we feel should not be decided, except after full argument and careful consideration."

According to the experience of the writer on circuit, it was the established and unchallenged practice in such case to subject both land and improvements to the lien of the judgment.

The appellant stands on the letter of the statute (Va. Code, 1904, § 3567) that "every judgment for money rendered in this State heretofore or hereafter against any person shall be a lien on all the real estate of or to which such person is or becomes possessed or entitled at or after the date of such judgment," and the line of decisions which hold that the lien attaches to such interest only as the debtor actually has in the property at or after the date of the judgment.

But, as we shall see presently, property affected by the lien cannot be made to serve as a nucleus, for the creation and building up of alleged after-acquired equities in behalf of subsequent purchasers with notice of the judgment. Such purchasers hold the property in subordination to the right of the creditor to subject it to his judgment in the condition in which he finds it at the time of such enforcement, without diminution or allowance for betterments placed upon it subsequent to the recovery and docketing of the judgment.

The right to allowance for improvements, under the Virginia statute, which is an innovation on the common law is confined to cases in which the improvement was made under a title believed to be good, and that is not predicable of a purchaser with notice of the incumbrance. Such purchaser has no higher right

to protection with respect to money invested in improvements than to the original purchase price paid for the land. Indeed, in its last analysis, the entire contention of the appellant rests, upon the fallacious proposition that an equity may be created after, which had no existence before, the rendition of the judgment—a doctrine which would introduce a mischievous change in the law, and that, too, in behalf of a class who voluntarily elect to expend their money in the purchase and improvement of property known to be incumbered.

It is a principle of real estate law that permanent improvements placed upon land become a part of the realty, and the owner must take notice that all liens which rest upon the fee will necessarily attach to such permanent structures as he may choose to erect. 1 Min. Real Prop. §§ 17, 23.

When the case of Fulkerson *v.* Taylor was before this court the second time (102 Va. 314, 46 S. E. 309), we held that "a purchaser cannot claim that he put improvements upon land in good faith, believing that he had good title, when the records disclose a defective title."

In that case, it is true, the purchaser claimed title under an unrecorded deed; but the principle is the same, and the court subjected both land and improvements to the satisfaction of the judgment.

So, also, in Flanary *v.* Kane, 102 Va. 547, 46 S. E. 312, it was said: "The provisions of chapters 124 and 125 of the Code * * * on the subject of improvements have no application to a judgment creditor seeking to enforce his lien upon the land upon which the improvements have been made."

It must also be observed that in this instance the appellant was a pendente lite purchaser, with actual and constructive notice of the lis pendens. Consequently, upon well-settled principles, he took the property subject to any decree that might be rendered against his vendor in that suit touching the subject-matter thereof. Hurn *v.* Keller, 79 Va. 415; Sharitz *v.* Moyers, 99 Va. 519, 39 S. E. 166; Va. Iron Coal & Coke Co. *v.* Roberts, 103 Va. 661, 49 S. E. 984.

In every aspect of the case, the decree complained of is plainly right, and must be affirmed.

Affirmed.

HARRISON, J., absent.